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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 EKO BRANDS, INC.,

9 Plaintiff,

10 v.

11 ADRIAN RIVERA MAYNEZ
12 ENTERPRISES, INC., and ADRIAN RIVERA,

13 Defendants.

Case No. C15-522RSL

ORDER AWARDING PLAINTIFF
ATTORNEY'S FEES

14 This matter comes before the Court on “Eko Brands’ Motion for Attorney’s Fees.” Dkt.
15 # 105. The Patent Act authorizes district court’s to award attorney’s fees to prevailing parties in
16 “exceptional cases.” 35 U.S.C. § 285. A case is “exceptional” if it “stands out from others with
17 respect to the substantive strength of a party’s litigating position (considering both the governing
18 law and the facts of the case) or the unreasonable manner in which the case was litigated.”

19 Octane Fitness, LLC v. ICON Health & Fitness, Inc., __ U.S. __, 134 S. Ct. 1749, 1756 (2014).

20 Considering the totality of the circumstances presented here, the Court finds that
21 defendants’ pursuit of their infringement claims after the Court issued its Markman rulings was
22 frivolous and unreasonable. On February 24, 2016, the Court construed the term “passageway”
23 to mean “a narrow space of some depth or length connecting one place to another.” Dkt. # 42 at
24 12. Based on the arguments raised by the parties, the Court specifically informed defendants
25 that, to the extent their infringement claims depended on a construction of “passageway” that
26 “would encompass a receptacle that had no bottom or that utilized a broad, thin mesh, it is

1 rejected.” Id. Plaintiff’s products utilize a broad, thin mesh or micro-punched steel filter to allow
2 the brewed beverage to exit the receptacle. They do not, therefore, contain the claimed
3 “passageway,” a fact which was patently obvious more than eight months ago. Rather than seek
4 reconsideration of the Markman ruling, withdraw their infringement claims, or accept an adverse
5 judgment to pursue an appeal, defendants maintained their course, forcing plaintiff to file a
6 motion for summary judgment. Defendants responded to that motion with sophistry, using words
7 in untenable ways and making arguments that no reasonable person would find persuasive.
8 Defendants’ dogged and unreasonable pursuit of its infringement claims were exceptional.
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10 For all of the foregoing reasons, plaintiff is entitled to an award of the reasonable
11 attorney’s fees it incurred between February 24, 2016, and August 17, 2016, in its efforts to
12 obtain a declaration of non-infringement. The Clerk of Court is directed to renote this Motion for
13 Attorney’s Fees on the Court’s calendar for Friday, December 2, 2016. Plaintiff shall, within
14 fourteen days of the date of this Order, submit a declaration and other evidence establishing the
15 reasonableness of the rates and hours sought. Defendants may file an opposition on or before
16 Monday, November 28, 2016. Plaintiff’s reply, if any, is due on the note date.
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18 Dated this 3rd day of November, 2016.

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20 Robert S. Lasnik

21 United States District Judge
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